

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION	)	
FOR BENEFICIAL WATER USE PERMIT	)	FINAL ORDER
NO. 42362-s41H BY JENNIE JOHNSON	)	
AND GREG SAKS	)	

\* \* \* \* \*

The objections filed by the Objectors hereto are in substance the same as these previously passed upon in numerous prior dispositions. Our decisions therein control the present matter. The Bureau also requests that we incorporate the evidentiary matter in In re Brown into the present record. In effect, this incorporation has already been achieved. We rely on In re Brown et. al. for our disposition herein. Error in the seminal case taints the instant one.

WHEREFORE, the objections filed on behalf of the Montana Power Company and the Bureau of Reclamation are hereby ordered stricken.

Application for Beneficial Water Use Permit No. 42362-s41H is hereby granted to Greg Saks and Jennie Johnson, jointly, to appropriate 1350 gallons per minute up to 32.5 acre-feet per year for the irrigation of 13 acres more or less comprised of 10 acres in the NW1/4 and 3 acres in the NE1/4 of Section 12, Township 3 South, Range 7 East, all in Gallatin County. In no event shall these waters be diverted prior to May 1 of any given year nor subsequent to November 30 of any given year. In addition, the

Permittees are hereby authorized to appropriate 50 gallons per minute up to 80.6 acre-feet per year for the production of hydroelectricity continuously throughout the year as required. In addition, the Permittees are further authorized to use up to .14 acre-feet of the source of supply for stock-watering purposes continuously throughout the year as required. The source of supply shall be certain waters tributary to Meadow Creek, at a point or points in the SW1/4 NW1/4 NW1/4 of Section 12, Township 3 South, Range 7 East, in Gallatin County. The priority date for this Permit shall be March 2, 1982, at 12:30 p.m.

This Permit is subject to the following express conditions, limitations, and restrictions.

A. Any rights evidenced herein are subject to all prior and existing rights, and to any final determination of such rights as provided by Montana law. Nothing herein shall be construed to authorize the Permittees to divert water to the detriment of any senior appropriator.

B. The Permittees shall in no event cause to be withdrawn from the source of supply more water than is reasonably required for the purposes provided for herein.

C. Nothing herein shall be construed to affect or otherwise reduce the Permittees' liability for damages which may be caused by the exercise of this permit.


D. The Permittees shall proceed with reasonable diligence in completing the appropriation provided for herein by actually


applying the water provided for herein to the named beneficial use.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DONE this 24 day of April, 1984.

  
\_\_\_\_\_  
Gary Fritz, Administrator  
Department of Natural  
Resources and Conservation  
32 S. Ewing, Helena, MT  
(406) 444 - 6605

  
\_\_\_\_\_  
Matt Williams, Hearing Examiner  
Department of Natural Resources  
and Conservation  
32 S. Ewing, Helena, MT 59620  
(406) 444 - 6704

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION           )  
FOR BENEFICIAL WATER USE PERMIT           )           FINAL ORDER  
NO. 47276-s41I BY GRAVELEY LD RANCH       )

\* \* \* \* \*

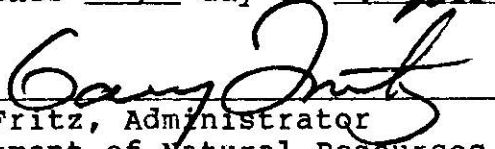
The objections filed by the Objectors hereto are in substance the same as those previously passed upon in numerous prior dispositions. Our decisions therein control the present matter. The Bureau also requests that we incorporate the evidentiary matter in In re Brown into the present record. In effect, this incorporation has already been achieved. We rely on In re Brown et al. for our disposition herein. Error in the seminal case taints the instant one.


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Department of Natural Resources  
and Conservation  
32 S. Ewing, Helena, MT 59620  
(406) 444-6605

  
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Matt Williams, Hearing Examiner  
Department of Natural Resources  
and Conservation  
32 S. Ewing, Helena, MT 59620  
(406) 444-6704

AFFIDAVIT OF SERVICE  
FINAL ORDER

STATE OF MONTANA                    )  
  ) ss.  
County of Lewis & Clark )

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on April 25, 1984, she deposited in the United States mail. Certified mail, an order by the Department on the Application by GREG SAKS & JENNIE JOHNSON, Application No. 42362-s41H, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Jennie Johnson, 820 N. Tracy, Bozeman, MT 59715
2. Greg Saks, 820 N. Tracy, Bozeman, MT 59715
3. Bureau of Reclamation, P.O. Box 2553, Billings, MT 59103
4. US Dept. of Interior, P.O. Box 1538, Billings, MT 59103
5. Montana Power Co., 40 East Broadway, Butte, MT 59701
6. K. Paul Stahl, Attorney, 301 First National Bank Bldg., P.O. Box 1715, Helena, MT 59624 (hand delivered)
7. Scott Compton, Bozeman Field Office (inter-departmental mail)
8. Gary Fritz, Administrator, Water Resources (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION

by Donna Elser

STATE OF MONTANA                    )  
  ) ss.  
County of Lewis & Clark )

On this 25<sup>th</sup> day of April, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Judy John  
Notary Public for the State of Montana  
Residing at Montana City, Montana  
My Commission expires 3-1-85

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION       )  
FOR BENEFICIAL WATER USE PERMIT       )       NOTICE OF CORRECTION  
NO. 42362-S41H BY JENNIE JOHNSON &   )  
GREG SAKS                                )

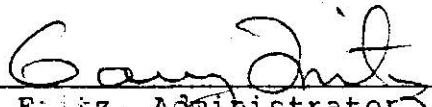
\* \* \* \* \*

On April 24, 1984 the Department of Natural Resources and Conservation issued a Final Order in the above-entitled matter. The Final Order contains typographical errors which are hereby corrected as follows:

(Page 1) paragraph three (3), the first sentence shall read;  
"Application for Beneficial Water Use Permit No. 42362-s41H is hereby granted to Greg Saks and Jennie Johnson, jointly, to appropriate 1350 gallons per minute up to 32.5 acre-feet per year for the irrigation of 13 acres, more or less, in the W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 12, Township 3 South, Range 7 East, all in Gallatin County."

The Final Order in this matter is hereby amended to conform to the above specified correction.

DONE this 15 day of June, 1984.

  
\_\_\_\_\_  
Gary Fritz, Administrator  
Water Resources Division  
Department of Natural Resources  
and Conservation  
32 South Ewing, Helena, MT 59620  
(406) 444 - 6605

AFFIDAVIT OF SERVICE  
NOTICE OF CORRECTION

STATE OF MONTANA                    )  
  ) ss.  
County of Lewis & Clark )

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on June 19, 1984, she deposited in the United States mail, Certified mail, an order by the Department on the Application by GREG SAKS & JENNIE JOHNSON, Application No. 42362-s41H, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Jennie Johnson, 820 N. Tracy, Bozeman, MT 59715
2. Greg Saks, 820 N. Tracy, Bozeman, MT 59715
3. Bureau of Reclamation, P.O. Box 2553, Billings, MT 59103
4. US Dept. of Interior, P.O. Box 1538, Billings, MT 59103
5. Montana Power Co., 40 East Broadway, Butte, MT 59701
6. K. Paul Stahl, Attorney, 301 First National Bank Bldg., P.O. Box 1715, Helena, MT 59624
7. Scott Compton, Bozeman Field Office (inter-departmental mail)
8. Gary Fritz, Administrator, Water Resources (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION

by *Donna K. Elser*

STATE OF MONTANA                    )  
  ) ss.  
County of Lewis & Clark )

On this 19th day of June, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

*Judy Kohn*  
Notary Public for the State of Montana  
Residing at Montana City, Montana  
My Commission expires 3-1-85

\* \* \* \* \*

\* \* \* \* \*

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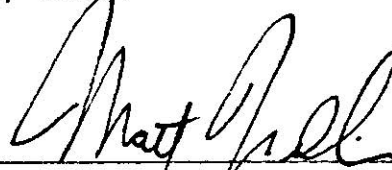


Commencing with the Proposal for Decision In re Brown, and continuing through a number of applications where the Bureau of Reclamation and Montana Power Company presented evidence at hearings held pursuant thereto, this Hearings Examiner has concluded that the scope and extent of these entities' rights to the use of the water resource as indicated by the evidence therein did not warrant denial of the respective applications for new water use permits. Since the instant objections allege similar matters to those involved in prior hearings, hearings on the factual issues suggested by the present controversy threaten a waste of time and undue time and expense to the parties involved. See generally, MCA 2-4-611(3)(1981); MCA 85-2-309 (1982).

WHEREFORE, the Montana Power Company and the Bureau of Reclamation are hereby directed to show cause why their objections should not be stricken and the instant application approved according to the terms thereof. Said Objectors shall file with the Department no later than May <sup>13</sup> ~~8~~, 1983, affidavits and/or other documentation demonstrating that the present Applicant is not similarly situated with respect to prior applicants for which permits have been proposed over these Objectors' objections; and/or offers of proof as to matters not presented in prior hearings, which matters compel different results herein; and/or argument that the proposed dispositions in such prior matters were afflicted by error of law or were otherwise improper; and/or any other matter that demonstrates

that the present objections state a valid basis for denial or modification of the instant application.

DONE this 29<sup>th</sup> day of April, 1983.



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Matt Williams, Hearing Examiner  
Department of Natural Resources  
and Conservation  
32 S. Ewing, Helena, MT 59620  
(406) 449 - 3962

STATE OF MONTANA )  
 ) ss.  
County of Lewis & Clark )

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5. K. Paul Stahl, P.O. Box 1715, Helena, MT 59624
6. Scott Compton, Bozeman Field Office (inter-department mail)
7. Matt Williams, Hearing Examiner (hand-deliver)

by Cheryl K. Wallace

STATE OF MONTANA             )  
County of Lewis & Clark) ss.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

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